

JUDGE E. MUNSON

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

08 CR 7603

Liberty Mutual Fire Insurance Company, : C.A. No.

as subrogee of Constance Leidy
175 Berkeley Street
Boston, MA 02117,

Plaintiff,

v.

Pet Supply Imports, Inc., : JURY TRIAL DEMANDED

16975 Westview Avenue
South Holland, IL 60473

SERVE ON: Roger F. McElheney

Registered Agent

16975 Westview Avenue
South Holland, IL 60473

Defendant.

COMPLAINT

Plaintiff, Liberty Mutual Fire Insurance Company, as subrogee of Constance Leidy by and through its counsel, Cozen O'Connor, hereby demands judgment against Pet Supply Imports, Inc., and, upon information and belief, complains against defendants as follows:

Parties

1. Plaintiff, Liberty Mutual Fire Insurance Company (hereinafter referred to as "Liberty Mutual"), is a citizen and corporation duly organized and existing under the laws of the Commonwealth of Massachusetts, with its principal place of business located at 175 Berkeley Street, Boston, Massachusetts 02117, and, is duly authorized to issue policies of insurance in the State of New York.

2. Defendant, Pet Supply Imports, Inc. (hereinafter referred to as "Pet Supply Imports"), is a citizen and corporation organized and existing under the laws of the State of Illinois,

with its principal place of business located at 16975 Westview Avenue, South Holland, IL 60473, and is engaged in the business of selling pet supply products.

Jurisdiction and Venue

3. Jurisdiction in this Court is pursuant to the provisions of 28 U.S.C. § 1332, by reason of diversity of citizenship of the parties and the matter in controversy, exclusive of interest and costs, exceeds the sum of \$75,000.

4. Venue in this action is properly laid in the United States District Court for the Southern District of New York in that the cause of action arises from an incident that occurred in New City, New York.

General Allegations

5. At all times material hereto, Liberty Mutual provided property insurance coverage to Constance Leidy for her property located at 96 Collyer Avenue, New City, NY 10951 (hereinafter "subject premises").

6. Prior to February 21, 2008, Ms. Leidy purchased a SnuggleSafe Microwave Heatpad ("the heatpad" or "the subject heatpad"), which was designed and manufactured by Lenric C21 Ltd., located at Unit 10, Thorgate Road, Lineside Industrial Estate, Littlehampton, West Sussex, BN17 7LU, United Kingdom.

7. The subject heatpad was distributed by defendant, Pet Supply Imports.

8. During the evening hours of February 20, 2008, Ms. Leidy heated the subject heatpad in her microwave and placed the heatpad in bedding materials on the rear deck of the subject premises in order to keep her cats warm.

9. During the early morning hours of February 21, 2008, a fire erupted on the rear deck of the subject premises, causing substantial damage and destruction to the subject

- b. Allowing a dangerous condition to exist in the heatpad by failing to adequately and properly inspect and/or test the heatpad to discover the defects therein;
- c. Failing to warn customers, including plaintiff's insured, about the substantial risk of fire presented by the manufacture and/or design of the heatpad; and
- d. Designing, distributing, selling and/or supplying the heatpad without adequate warnings and instructions.

16. As a direct and proximate result of the aforesaid strict-liability-producing conduct, the fire occurred and resulted in damage and destruction to plaintiff's insured's real and personal property in an amount in excess of \$175,000.

WHEREFORE, plaintiff, Liberty Mutual, as subrogee of Constance Leidy, demands judgment against defendant, Pet Supply Imports, in an amount in excess of \$175,000, together with prejudgment interest, costs of this action, and any other relief that this Court deems proper.

COUNT II
BREACH OF WARRANTIES
LIBERTY MUTUAL V. PET SUPPLY IMPORTS

17. Plaintiff incorporates the allegations contained in the foregoing paragraphs as though each were fully set forth herein at length.

18. In designing, manufacturing, distributing, selling, and/or supplying the heatpad, defendant, Pet Supply Imports, expressly and impliedly warranted that it was fit for the particular and ordinary purpose for which it was intended and that the heatpad was of good and merchantable quality.

19. By designing, manufacturing, distributing, selling, and/or supplying the heatpad in a defective and unreasonably dangerous condition as heretofore described at length, Pet Supply Imports breached its express and implied warranties.

20. As a direct and proximate result of the above-referenced breaches of warranties, the subject fire occurred and resulted in damage and destruction to Ms. Leidy's real and personal property in an amount in excess of \$175,000.

WHEREFORE, plaintiff, Liberty Mutual, as subrogee of Constance Leidy, demands judgment against defendant, Pet Supply Imports, in an amount in excess of \$175,000, together with prejudgment interest, costs of this action, and any other relief that this Court deems proper.

COUNT III

VIOLATION OF THE MAGNUSON-MOSS WARRANTY-FEDERAL TRADE
COMMISSION IMPROVEMENT ACT (15 U.S.C. §§ 2301 ET SEQ)
LIBERTY MUTUAL V. PET SUPPLY IMPORTS

21. The heatpad is a consumer product in that it is tangible personal property distributed in commerce normally used for personal, family, or household purposes.

22. Pet Supply Imports is a supplier in that it engaged in the business of making the heatpad directly or indirectly available to consumers.

23. Pet Supply Imports' breach of New York's implied warranty of merchantability with respect to the heatpad constitutes a violation of the Magnuson-Moss Warranty-Federal Trade Commission Improvement Act (15 U.S.C. §§ 2301 *et seq.*).

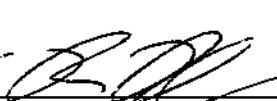
24. Therefore, Pet Supply Imports is liable for the damages caused by that breach, in addition to the attorney's fees and costs incurred in bringing this claim, pursuant to 15 U.S.C. § 2310(d)(2).

WHEREFORE, plaintiff, Liberty Mutual, as subrogee of Constance Leidy, demands judgment against defendant, Pet Supply Imports, in an amount in excess of \$175,000, together with prejudgment interest, costs of this action, and any other relief that this Court deems proper.

Respectfully submitted,

COZEN O'CONNOR

By:



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